BOOKS AND PERIODICALS.

MONEY PAID UNDER MISTAKE OF FACT. — The rule that money paid under a mistake of fact may be recovered whenever it would be against conscience for the defendant to retain it, has been vigorously attacked in a recent article. *Money paid under Mistake as to a Collateral Fact.* By Charles Henry Tuttle. 63 Albany L. J. 340 (Sept. 1901). Although this doctrine is almost universally accepted in the form above stated by both courts and text-writers, KEENER, QUASI-CONT., 26, yet the author regards it as a mere appeal to the moral sense of each judge, necessarily resulting in as many conflicting decisions as judges may have variant views of correct moral principles. The science of law is thus converted into the philosophy of ethics. Stability and justice demand, to his mind, that some definite legal rule, based, in so far as is possible, on this moral principle, be adopted. The rule he suggests is that recovery of money paid under a mistake should be allowed where the mistake concerns an intrinsic fact regarding the relations between the plaintiff and the defendant, and denied where it concerns merely an extrinsic or collateral fact.

Mr. Tuttle's characterization of the present doctrine as unworthy the name of a legal rule is hardly justified. In law the rule that all contracts must conform to public policy, and in equity the rules regarding constructive trusts, employ standards fully as indefinite. In deciding what is against conscience a judge must refer, not to his own code of morals, but to that accepted generally by the community. As a result, not only is substantial justice reached, but the decisions have a satisfactory uniformity. Moreover the courts are bound to no defined course, should changed conditions present new phases of old problems. As a substitute for this doctrine, Mr. Tuttle proposes an arbitrary rule. What matters it whether a plaintiff paid money to an undeserving defendant because of a misconception of his relations to such defendant or to a third person? In either case, as the result of a mistake on the plaintiff's part, the defendant has received money for which he has given no return, and this, it is submitted, is the gist of the action. The inequitable results of the suggested doctrine may be illustrated by the following case. The drawee of a gratuitous check, acting under the mistaken belief that he holds funds belonging to the maker, cashes it for the payee. According to this rule the payee could hold the funds against the drawee, merely because the drawee's mistake concerned his relations with the maker, a third person, rather than with the payee. Yet on no principle of justice could the latter defend his position. Mr. Tuttle argues that in this class of cases, the payee having a right revocable by the maker at any time before payment, practically acts as an agent for the maker, and thus, there being only two real parties in interest at the time of payment, the mistaken fact may be treated as intrinsic. But this argument can be regarded only as an attempt to escape from the logical consequences of the author's own doctrine.

It must be admitted that the law would be simplified, and the number of litigated cases lessened, could the courts adopt some more definite rule, substantially embodying the present doctrine. But the rule here advocated, though it may prove fruitful of suggestions, hardly seems to meet the requirement. Moreover, as regards authoritative support, its terminology has been employed by only two judges, and its principle has been contradicted by a number of decisions.

ESTOPPEL AS APPLIED TO AGENCY. — In his recent work on Estoppel Mr. Ewart contended that the responsibility of principals for the contracts of agents acting with apparent authority is to be accounted for, not by the doctrine of agency, but by the law of estoppel. EWART ON ESTOPPEL, ch. 26. It has, however, been pointed out that where a third party makes a contract with an agent having apparent authority, the principal is bound whether the party has